

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 100436-001

v

Health Alliance Plan of Michigan
Respondent

Issued and entered
this 12th day of November 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 29, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On October 6, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

This case required review by a medical professional. Therefore, the Commissioner assigned the matter to an independent review organization (IRO). On October 30, 2008, the IRO completed its review and sent its recommendation to the Office of Financial and Insurance Regulation.

II
FACTUAL BACKGROUND

The Petitioner is a member of the Health Alliance Plan of Michigan (HAP), a health maintenance organization.

The Petitioner lost significant weight (330 pounds) following bariatric surgery. As a

result, he has recurring cutaneous infections in the folds his abdominal pannus. He requested an abdominal panniculectomy.

At the conclusion of the first level review in its grievance process, HAP sent the Petitioner a letter dated June 2, 2008, denying the panniculectomy because the Petitioner had not shown that he had treated without success with an affiliated dermatologist for six months as required by its medical policy on panniculectomies. In its final adverse determination dated September 11, 2008, HAP denied further review at the second level because the Petitioner had not appealed the first level decision within 60 days. Thus the Petitioner has exhausted HAP's internal grievance process.

III ISSUE

Did HAP properly deny the Petitioner's request for coverage of a panniculectomy?

IV ANALYSIS

PETITIONER'S ARGUMENT

The Petitioner wants HAP to approve coverage for the abdominal panniculectomy because rashes and fungal infections are a continuous problem. These infections result in pain, discharge, odor, and embarrassment. Since 2005 he has used topical creams (both over-the-counter and prescription) to treat them but without success -- they clear up for a few days and then return.

Both the Petitioner's dermatologist and his primary care physician (PCP) determined that surgery for removal of the excess tissue is medically necessary to prevent recurrence of the infections. In a letter to HAP dated February 19, 2008, the dermatologist said in part:

[The Petitioner] was recently seen in our office on January 29, 2008.

During that visit, he presents with an intertrigo below the panniculus. The [Petitioner] underwent bariatric surgery two years ago but presently has a great deal of redundant skin on the abdomen that is exacerbating this intertriginous dermatitis. Cutivate cream in Mycostatin cream was

suggested for use t.i.d. When the patent was seen on February 12, 2008, the patient had greatly improved.

I do feel that this problem will recur because of the redundant skin overlying the abdomen. Therefore, I have suggested that it be removed surgically to help prevent an exacerbation of this problem.

The Petitioner's PCP wrote to HAP on February 28, 2008:

As is often the case with dramatic weight loss, large skin folds formed in the area where fat was lost and now these folds are repeatedly infected with a cutaneous fungal infection. I have prescribed topical anti-fungal medication as long ago as April 2005 but these infections continue to return.

The best course of treatment for this condition is abdominoplasty.¹

The Petitioner believes that surgery should be approved and covered by HAP because it is medically necessary.

HAP'S ARGUMENT

In its final adverse determination letter, HAP denied coverage for the panniculectomy stating:

[I]t was noted that you [sic] if you could show evidence after treating with an Affiliated dermatologist for a period of six months, that your condition failed to respond to treatment, HAP would then reconsider your request for an abdominal panniculectomy. The letter also advised that if you disagreed with our determination, you had the option to proceed to the second level of the grievance process by submitting a detailed letter within sixty (60) days from the date of the determination. * * *

* * * Our records do not indicate that you followed our request to treat with an affiliated dermatologist for 6 months. Therefore, since you did not comply with this request and you have exceeded your timeframe to pursue this case through HAP's grievance process, we are unable to accept your request to proceed through the grievance process.

Because the Petitioner did not comply with HAP's request to treat with a dermatologist or appeal within the time allowed by its grievance process, HAP maintained the denial it issued after the step one level grievance.

¹ Note- The procedure requested and denied was for an abdominal panniculectomy rather than an abdominoplasty.

COMMISSIONER'S REVIEW

HAP's final adverse determination was based on the petitioner's failure to meet two criteria – his failure to seek the second level of appeal within 60 days of the denial issued at the first appeal level, and his lack of treatment for at least six months with an affiliated dermatologist.

Failure to meet the timelines allowed by law and established by HAP eliminated the petitioner's opportunity to pursue his appeal with HAP, but allowed him to come directly to the Commissioner for relief.

The second reason for his denial was that the petitioner failed to seek treatment from a HAP affiliated dermatologist for at least six months. The record, however, reflects that the petitioner did, in fact, seek treatment from a dermatologist, and the letter from that dermatologist recommending surgical treatment was quoted earlier in this order. Neither HAP nor the petitioner stated in the record whether that treatment was rendered by a HAP-affiliated dermatologist or noted length of time dermatologic treatment was rendered.

Therefore, to answer the question of whether it was medically necessary for the Petitioner to have an abdominal panniculectomy, the Commissioner assigned this matter to an independent review organization (IRO). The IRO reviewer is certified by the American Board of Plastic Surgery; a diplomate of the American Board of Surgery; a member of the American Society of Plastic and Reconstructive Surgeons and the American Society for Surgery of the Hand; and is in active practice specializing in pediatric plastic and craniofacial surgery. The IRO reviewer said that a panniculectomy is medically necessary for the Petitioner.

The IRO report said in part:

It is the opinion of this reviewer that panniculectomy is medically necessary for [the Petitioner's] condition. An abdominoplasty is considered cosmetic.

Clinical Rationale for Decision

Health Alliance Plan's medical policy regarding panniculectomy is consistent with the current standard of care and the [Petitioner] meets the health plan's criteria.

[The Petitioner] has had frequent rashes in his pannus fold despite medically supervised treatment with antifungal medications for over three (3) years. The physician's letter dated February 28, 2008 states that the enrollee has been treated with antifungal medications since April 2005 (criterion 1a is met). His weight has been stable for three (3) months (criterion 1b is met). Finally, photos show a pannus that hangs beyond the pubis, and excoriations are evident in the pannus fold (criterion 1c is met).

* * *

Per the 2008 Apollo Managed Care Guidelines, a panniculectomy is medically necessary if the pannus hangs below the pubis and chronic intertrigo is present and remains refractory to conservative medical therapy for at least three (3) to six (6) months. [The Petitioner's] pannus hangs below the pubis, and years of medical treatments have failed to resolve his infections.

For [the Petitioner], a panniculectomy (15830) is medically necessary, but an abdominoplasty (18547) is not medically necessary. * * *

The records indicate that the [Petitioner] has failed conservative treatment for his longstanding rashes. Diastasis repair and umbilical transposition are component parts of an abdominoplasty that are not necessary. It is the opinion of this reviewer that a panniculectomy with skin resection is sufficient to treat [the Petitioner's] infections and medically necessary in [the Petitioner's] case.

The Commissioner is not required in all instances to accept the IRO recommendation. However, the IRO reviewer's conclusion is afforded deference by the Commissioner because it is based on extensive expertise and professional judgment. The Commissioner, discerning no reason why it should be rejected, accepts the IRO recommendation in this case and finds that the Petitioner has met HAP's medical policy coverage criteria for a panniculectomy and therefore it is a covered benefit.

V ORDER

The Commissioner reverses HAP's September 11, 2008, final adverse determination which denied coverage for the requested panniculectomy. HAP shall authorize and cover the

Petitioner's panniculectomy. HAP shall comply with this Order within sixty days and shall provide the Commissioner with proof it complied within seven days of compliance.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.